

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	IB Docket No. 02-324
International Settlements Policy Reform)	
International Settlement Rates)	IB Docket 96-261
)	

**COMMENTS OF THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION (COMPTEL)**

The Federal Communications Commission (“FCC” or “Commission”) has initiated a Notice of Proposed Rulemaking (“NPRM”) to examine possible reform of its International Settlements Policy (“ISP”), as well as its International Simple Resale (“ISR”) and benchmark settlement rate policies.¹ In the *NPRM*, the Commission requests comments on a broad range of evolving settlement rate matters, several of which have been examined in prior proceedings but require further review given changes in the global telecommunications market. The Commission also seeks comment on an issue that has not been analyzed in prior proceedings: foreign mobile termination rates. *NPRM* at ¶¶ 1, 45-51. Because foreign mobile termination rates are harming U.S. consumers and carriers, and because prior Commission proceedings have not analyzed the need for regulatory intervention, CompTel focuses its comments exclusively on this matter.

Absent Commission intervention, foreign mobile termination rates threaten to erode the benefits of lower international termination rates. U.S. consumers are paying as much as 1500% more for mobile termination than for fixed termination in some

¹ *International Settlements Policy Reform*, Notice of Proposed Rulemaking, IB Docket No. 02-324 (rel. Oct. 11, 2002) (“*NPRM*”).

countries, and there is no cost-justification for these high charges. Compounding the effects of this unjustified rate differential is the fact that there is a steady increase in the mobile share of total international terminating traffic. Unless mobile termination rates change directions and start to move towards cost, total settlement out-payments will increase along with the percentage of mobile terminating traffic.

High mobile termination rates are especially common in countries using the “Calling Party Pays” regulatory regime (“CPP”) because CPP effectively eliminates incentives to reduce termination charges. With CPP, the calling party is responsible for the payment of calls placed to a mobile phone subscriber, whereas the mobile phone subscriber pays only for outgoing calls. *NPRM* at ¶ 45. Where CPP is used, both regulator and mobile carrier alike have justified it as a means to accelerate mobile phone penetration. The artificial boost to subscription occurs because the mobile operator can use high termination rates to subsidize low cost mobile subscriber handsets or subscription rates.²

In hand with the claim that CPP is necessary for increasing penetration,³ however, there is an inherent flaw: it eliminates market incentives and competitive pressure that could constrain termination charges. Even if a calling party is dissatisfied with a high charge, he cannot take his business elsewhere because he must use that mobile network to reach the particular number. Likewise, the subscriber typically will not be concerned with the high rates other must pay, particularly if such rates are cross-subsidizing his low

² See *Review of the Charge Controls on Calls to Mobiles*, Issued by the Director General of Telecommunications on Competition in Mobile Voice Call Termination and Consultation on Proposals for a Charge Control, at ¶¶2.2-2.4 (rel. Sept. 26, 2001) (UK).

³ CPP is not necessary to achieve high mobile penetration rates. For example, Singapore has achieved a 75.6% mobile penetration rate, and uses a Receiving Party Pays (“RPP”) regulatory regime similar to that in the U.S. See IDA Statistics for Telecom Services at www.ida.gov.sg.

cost service. Due to this structural flaw with CPP, there is no sign that termination charges will decrease in the near future as a result of market forces.

Steep price decreases are overdue. In the absence of market-based price pressure, mobile termination rates are as much as 1500% higher than fixed termination rates in the same country, even though the actual cost differences are relatively minor.⁴ Limited differences in cost between fixed and mobile termination might be justified by differences in technology or customer profile, but certainly not to the extent reflected in current pricing. Indeed, studies in Europe have concluded that wholesale mobile termination prices can be up to 70% higher than actual cost,⁵ and these rates often are kept high by mobile operators explicitly to subsidize their more competitive retail mobile markets or to subsidize their 3G license fees.

The excessive charges are troubling to U.S. consumers and carriers for several reasons. Most important, the mobile share of international terminating traffic is steadily increasing, while the gap between mobile and fixed termination charges remains in tact. The percentage of U.S.-outbound international traffic terminating on mobile phones stands at approximately 21%, and will continue to climb along with foreign mobile subscription trends.⁶ This shift in the traffic mix and the accompanying termination rate differential means that ever more traffic would be settled with foreign correspondents at high, non-competitive, and non-cost based rates. If left purely to the market, this undesirable forecast would lead to overall settlement rate increases in several countries.

⁴ INTUG, *Termination of International Calls to Mobile Networks*, Submission of INTUG to ITU-T SG3 (rel. June 2002), at pp. 3-7; Telegeography 2002, *International Traffic to and from Mobile Phones*, at Figure 9 (2002).

⁵ Ovum, *Mobile Termination Rates*, at p.16 (rel. 2000) (citing Ovum study and ECTA study).

⁶ *NPRM*, at ¶48. Note also that the ITU has estimated that the number of worldwide mobile subscribers will surpass the number of fixed line subscribers by as early as 2003. In some countries where mobile penetration is expected to substantially exceed fixed penetration, such as China or the Philippines, the percentage of mobile terminating traffic will likewise exceed global averages.

To this point, CompTel members report that there are approximately 75 countries that currently require separate and higher mobile rates as compared to fixed rates. Furthermore, more than 40 of those countries have mobile termination rates above the applicable Benchmark rate to that country.

A further concern with these high charges is that they foster network and market inefficiency among the foreign mobile operators by improperly shifting a cost burden to the U.S. calling party. Thus, the settlement rate increases would enable foreign operators to use high cost international mobile termination rates from U.S. consumers as a cash cow to subsidize their domestic network costs. This directly clashes with the Commission's primary goal of protecting U.S. consumers from potential harm caused by instances of insufficient competition in the global telecommunications market. *NPRM* at ¶1.

The Commission must respond to restrain foreign mobile termination rates.⁷ In recent months, the mobile termination price excesses in CPP countries have attracted overdue regulatory scrutiny. EC Commissioner for Competition Policy, Mario Monti, has noted that: "Mobile termination rates are also an area of concern as these wholesale rates are not visible to consumers – neither the caller nor the person called is aware of the rates being charged for termination and there is scope for mobile operators to charge excessive prices without being 'caught.'"⁸ Consistent with this concern, and due to the empirical evidence within several member states of sustained structural flaws in the

⁷ Although CompTel member Cable & Wireless USA, Inc. ("C&W") agrees that foreign mobile termination rates are currently excessive, C&W believes that a prescriptive approach by the Commission is premature. Given that many foreign governments are presently examining this issue, C&W would prefer that the Commission allow these local initiatives to progress. See Comments of Cable & Wireless USA, Inc. (IB Docket Nos. 02-324, 96-261) (January 14, 2003).

⁸ Mario Monti, European Commissioner for Competition Policy, "*Competition and the Consumer: What are the Aims of European Competition Policy?*" European Competition Day in Madrid, Feb. 26, 2002.

mobile call termination market, the European Commission has recommended that the market for “call termination on individual mobile networks” should be presumed insufficiently subject to competitive market pressures and therefore subject to *ex ante* regulation.⁹ Likewise, several foreign regulators have concluded that mobile termination charge controls are necessary to constrain rates.¹⁰

Notwithstanding the efforts of a few foreign regulators to reduce wholesale mobile termination charges in their jurisdiction, there is a need for an immediate and comprehensive FCC response. The problem of high mobile termination rates is global, and U.S. consumers and carriers will continue to be harmed if charge control relief comes on a country-by-country basis, if at all. Moreover, it will be in the interests of some foreign regulators to allow or even to encourage high international mobile termination rates as a valuable subsidy that stands in lieu of fixed termination rates that have been reduced by competition.¹¹ For either reason, given the lack of competition on a global basis in the market for call termination on individual mobile networks, the Commission is the only regulator well positioned to protect U.S. consumers and carriers.

In response to the foreign mobile termination rate concerns set forth above, CompTel recommends the following clarifications to the Commission’s international settlement policies and benchmark policies. First, to protect the positive results of the Benchmark Order from upward rate regression, the FCC should clarify that all mobile

⁹ *Public Consultation on the Draft Commission Recommendation on Relevant Product and Service Markets within the Commission Recommendation on Relevant Product and Service Markets within the Electronic Communications Sector*, (rel. June 17, 2002) (Brussels).

¹⁰ See, e.g., *AGCOM Investigation of TIM and Omnitel Mobile Termination Rates*, www.agcom.it (rel. Jan. 3, 2002) (Italy); *BiPT Opinion Imposing Reduction in Mobile Termination Rates of Belgacom Mobile*, www.bipt.be (rel. Dec 17, 2001) (Belgium); *Review of the Charge Control on Calls to Mobiles*, www.oftel.gov.uk, (rel. Sept. 26, 2001) (UK).

¹¹ See, e.g., *Reglamento de Interconexión*, at Art. 28, www.ursec.gub.uy (rel Nov. 13, 2001) (Uruguay)(setting *minimum* mobile termination settlement rate at US\$0.30).

rate agreements must comply with the current Benchmark rate for the country. This will ensure that regardless of whether the mobile rate is a component of a blended settlement rate governed by the ISP, or whether it is a separately broken-out rate established pursuant to an ISR commercial agreement, the mobile rate must be at or below the Benchmark. Similarly, regardless of whether a U.S. carrier settles directly with a mobile operator, or settles with an international fixed operator that is passing through a mobile termination charge, the settlement rate paid by the U.S. carrier to the foreign carrier must satisfy the Benchmark. Foreign mobile operators must understand in very explicit terms that U.S. carriers must not pay a termination rate that is above Benchmark.

Second, to aid U.S. carriers in negotiating mobile settlement rates that are below Benchmark and closer to actual cost, the FCC also should clarify that mobile rate agreements must move on a downward glide-path. The Commission has previously emphasized that it would deny any “non-cost-based increases in, or surcharges to, the accounting rate,” unless these increases demonstrably were in the public interest.¹² The Commission should clarify that this existing ISP prohibition on rate increases applies to U.S.-outbound mobile rates. The triggering mechanism for Commission intervention in response to a proposed foreign carrier unilateral rate increase should be through a carrier-initiated enforcement process, similar to procedures for the enforcement of benchmark settlement rates.¹³

¹² *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, at ¶16, n.30 (1991); *See also AT&T Corp. Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Haiti*, 13 FC Rcd. 18,739, at ¶5 (1998) (ISP requires U.S. carrier to show that proposed surcharge “is cost-based or that the surcharge is accompanied by a reduction in the accounting rate and results in a lower overall accounting rate”).

¹³ *International Settlement Rates*, 12 FCC Rcd. 19,806, ¶186 (1997) (“*Benchmarks Order*”).

CompTel is hopeful that with the above-mentioned rule clarifications put into immediate effect, commercial pressure in settlement rate negotiations will drive down excessive mobile termination rates. However, given the deeply flawed structure of the mobile termination market, it will be necessary for the Commission to initiate a Further Notice of Proposed Rulemaking (“FNPRM”) to consider more forceful measures to achieve lower mobile termination rates, including to establish lower Benchmark rates for mobile traffic. CompTel encourages the Commission to pursue this FNPRM after the instant proceeding.

Conclusion

For the foregoing reasons, foreign mobile termination rates directly threaten to erode the benefits of lower international termination rates for U.S. consumers and carriers. To stop this harm, the Commission must clarify that all outbound mobile terminating traffic must settle at or below Benchmark, that unilateral increases by foreign carriers of mobile termination rates are impermissible, and that the Commission will initiate an FNPRM to establish lower Benchmarks for mobile terminating traffic. These measures will help protect U.S. consumers and carriers from the harm caused by a lack of competition in the foreign mobile termination market.

Respectfully submitted,



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